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6  
7 BEFORE THE  
BOARD OF ACCOUNTANCY  
8 DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

9 In the Matter of the Accusation )  
10 Against: )  
11 BEAU EDWARD BURKE ) ACCUSATION NO. AC-97-4  
3001 Corby Avenue, Suite A )  
12 Santa Rosa, CA 95407 )  
13 Certified Public Accountant )  
Certificate No. CPA 15707, )  
14 Respondent. )  
15

16 CAROL SIGMANN charges and alleges:

17 1. She is the Executive Officer of the California State  
18 Board of Accountancy (hereinafter the "Board") and makes and  
19 files this accusation solely in her official capacity.  
20

21 LICENSE INFORMATION

22 2. On or about October 31, 1970, Certified Public  
Accountant Certificate No. CPA 15707 was issued to respondent  
23 Beau Edward Burke (hereinafter "respondent") by the Board, under  
24 the laws of the State of California. Respondent's certificate is  
25 currently in full force and effect and has been in full force and  
26 effect at all times pertinent hereto. The certificate expires,  
27 subject to renewal on April 1, 1998.

STATUTES AND REGULATIONS

3. This accusation is brought under the authority of section 5100 of the Business and Professions Code which provides that the Board may revoke, suspend or refuse to renew any permit or certificate issued by the Board, or may censure the holder of any such permit or certificate for unprofessional conduct.

Unprofessional conduct is defined therein to include:

(c) Dishonesty, fraud or gross negligence in the practice of public accountancy.

(f) Willful violation of any rule of regulation promulgated by the Board.

(h) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

(j) Embezzlement, theft, misappropriation of funds or property or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses.

(i) Knowing preparation, publication or dissemination of false, fraudulent, or materially misleading financial statements, reports or information.

4. Section 5062 of the Business and Profession Code provides that a licensee shall issue a report which conforms to professional standards upon completion of a compilation, review or audit of financial statements. Board rule 58 (section 58 of Division 1 of Title 16 of the California Code of Regulations) provides that licensees engaged in the practice of public accountancy shall comply with all applicable professional standards, including but not limited to generally accepted

1 accounting principles and generally accepted auditing standards.

2 5. Section 5107 of the Business and Professions Code  
3 provides that the executive officer of the Board may request the  
4 administrative law judge as part of the proposed decision in a  
5 disciplinary proceeding to direct any holder of a certificate  
6 found guilty of unprofessional conduct in violation of  
7 subdivisions (b), (c), (i) and (j) of section 5100, or involving  
8 fiscal dishonesty in violation of subdivision (h) of section 5100  
9 to pay to the Board all reasonable costs of investigation and  
10 prosecution of the case, including, but not limited to,  
11 attorneys' fees.

12 FIRST CAUSE FOR DISCIPLINARY ACTION

13 6. In or about 1974, Frank J.<sup>1/</sup> retained respondent to  
14 perform tax work in connection with Frank J.'s acquisition of  
15 certain real property which he intended to convert from a fruit  
16 orchard to a grape vineyard. Between 1974 and 1993, respondent  
17 performed accounting services for Frank J. and for Frank J.  
18 Vineyards, Inc., including preparation of financial statements,  
19 preparation of federal and state tax returns and work in  
20 connection with an IRS audit.

21 7. In or about 1989, Frank J. became ill with pneumonia and  
22 kidney failure and authorized respondent to write and sign checks  
23 for Frank J. Vineyards, Inc. Between July 1, 1992 and October  
24 15, 1992, when Frank J. was seriously ill, respondent made  
25 unauthorized withdrawals of Frank J. Vineyards, Inc., funds for  
26

27 1. Full names will be released to respondent in  
discovery.

1 his own personal use and not for payment of legitimate bills of  
2 Frank J. Vineyards, Inc. Respondent wrote and signed the  
3 following checks on the Frank J. Vineyards, Inc., account:

4	<u>Check #</u>	<u>Payee</u>	<u>Date</u>	<u>Amount</u>
5	3762	Beau Edward Burke	7-15-92	\$10,000
	3794	Beau Edward Burke	8-26-92	10,000
6	3796	Exchange Bank	8-27-92	45,000
	3816	Beau Edward Burke	8-18-92	10,000
7	3836	Exchange Bank	10-15-92	100,000

8 8. Check number 3796, written by respondent for \$45,000 to:  
9 Exchange Bank, was used by respondent to purchase two cashier's  
10 checks from Exchange Bank. The first cashier's check was in the  
11 amount of \$25,000 payable to the IRS with respondent's social  
12 security number written on the check. The second cashier's check  
13 was in the amount of \$20,000 payable to Wayne Elsey, from whom  
14 respondent was attempting to purchase real property. This second  
15 cashier's check was subsequently endorsed to North Bay Title  
16 Company for payment of a cash deposit on the real property.  
17 Check number 3836, written by respondent for \$100,000 to Exchange  
18 Bank, was used to purchase a cashier's check in the amount of  
19 \$100,000 payable to North Bay Title Company for a further cash  
20 deposit on the real property. On November 6, 1992, when  
21 respondent was unable to purchase the real property being sold by  
22 Wayne Elsey, North Bay Title Company remitted \$100,000 to  
23 respondent. Respondent deposited \$100,000 in the Frank J.  
24 Vineyards, Inc., account on November 6, 1992. Neither the  
25 initial \$100,000 check (check 3836) from the Frank J. Vineyards,  
26 Inc. account nor the subsequent \$100,000 deposit to the Frank J.  
27 Vineyards, Inc., account were recorded by respondent on the books

of Frank J. Vineyards, Inc.

9. Respondent's conduct set forth hereinabove at paragraphs 6 through 8, inclusive, constitutes unprofessional conduct and cause for discipline pursuant to Business and Professions Code section 5100(h) in that respondent breached his fiduciary duty to Frank J. Vineyards, Inc., and engaged in fiscal dishonesty.

10. Respondent's conduct set forth hereinabove at paragraphs 6 through 8, inclusive, constitutes unprofessional conduct and cause for discipline pursuant to Business and Professions Code section 5100(j) in that respondent embezzled, stole and misappropriated the funds of Frank J. Vineyards, Inc.

11. Respondent's conduct set forth hereinabove at paragraphs 6 through 8, inclusive, constitutes unprofessional conduct and cause for discipline pursuant to Business and Professions Code section 5100(f) in that respondent wilfully violated a regulation promulgated by the Board, to wit, Board Rule 58 in that respondent failed to comply with generally accepted accounting principles in his failure to record the \$100,000 withdrawal and subsequent deposit to the Frank J. Vineyards, Inc. account.

#### SECOND CAUSE FOR DISCIPLINARY ACTION

12. Paragraph 6 above is incorporated herein by reference.

13. On or about December 19, 1991, respondent prepared a compiled financial statement for Frank J. Vineyards, Inc., for the year ending October 31, 1991. Respondent prepared the financial statement from books and records for Frank J. Vineyards, Inc., which he had also prepared. There are

1 discrepancies between the general ledger and the financial  
2 statement as follows:

3 a. The financial statement cash figures totaling  
4 \$1,056,752 differs from the general ledger balances of \$981,752,  
5 a \$75,000 discrepancy.

6 b. The financial statement Land-Ranch I total of  
7 \$119,545 differs from the general ledger balance of \$157,045, a  
8 \$37,500 discrepancy.

9 c. The financial statement Land-Ranch II total of  
10 \$456,326 differs from the general ledger balance of \$493,826, a  
11 \$37,500 discrepancy.

12 14. The compiled financial statement prepared by respondent  
13 for the year ending October 31, 1991 used outdated compilation  
14 report language not in conformance with then current professional  
15 standards. (See Statement on Standards for Accounting and Review  
16 Services (SSARS) paragraph 100.14.)

17 15. Respondent's conduct set forth hereinabove at  
18 paragraphs 12 through 14, inclusive, constitutes unprofessional  
19 conduct and cause for discipline pursuant to Business and  
20 Professions Code section 5100(c) in that respondent was grossly  
21 negligent in his preparation of the compiled financial statement.

22 16. Respondent's conduct set forth hereinabove at  
23 paragraphs 12 through 14, inclusive, constitutes unprofessional  
24 conduct and cause for discipline pursuant to Business and  
25 Professions Code section 5100(f) in that respondent wilfully  
26 violated a regulation promulgated by the Board, to wit, Board  
27 Rule 58 in that respondent failed to comply with generally

accepted accounting principles in his preparation of the compiled financial statement.

17. Respondent's conduct set forth hereinabove at paragraphs 12 through 14, inclusive, constitutes unprofessional conduct and cause for discipline pursuant to Business and Professions Code section 5100(f) in that respondent wilfully violated a section of the Accountancy Act, to wit, section 5062 in that respondent's compilation failed to conform to professional standards.

18. Respondent's conduct set forth hereinabove at paragraphs 12 through 14, inclusive, constitutes unprofessional conduct and cause for discipline pursuant to Business and Profession Code section 5100(i) in that respondent knowingly prepared a false, fraudulent and materially misleading financial statement.

### THIRD CAUSE FOR DISCIPLINARY ACTION

19. Paragraphs 6 and 7 above are incorporated herein by reference.

20. During the period between November 1, 1991 and October 31, 1992, while Frank J. was ill and respondent was authorized to write and sign checks for Frank J. Vineyards, Inc., respondent submitted and paid grossly excessive bills for his accounting services to Frank J. Vineyards. These included grossly excessive charges for monthly accounting services and charges for purported research regarding an IRS tax audit which research was, in fact, performed by the attorneys for Frank J. Vineyards, Inc. The total amount respondent billed and paid to himself for purported

1 accounting services performed for Frank J. Vineyards, Inc.  
2 between November 1, 1991 and October 31, 1992 was \$288,859.61.

3 21. Respondent's conduct set forth hereinabove at  
4 paragraphs 19 and 20 constitutes unprofessional conduct and cause  
5 for discipline pursuant to Business and Professions Code section  
6 5100(j) in that respondent obtained money from Frank J.  
7 Vineyards, Inc., by fraudulent means and false pretenses by his  
8 submission and payment of grossly excessive bills for accounting  
9 services.

10 22. Respondent's conduct set forth hereinabove at  
11 paragraphs 19 and 20 constitutes unprofessional conduct and cause  
12 for discipline pursuant to Business and Professions Code section  
13 5100(h) in that respondent's submission of and payment of his  
14 grossly excessive bills to Frank J. Vineyards, Inc., constituted  
15 a breach of his fiduciary duty to Frank J. Vineyards, Inc.

16 OTHER MATTERS

17 23. It is charged, in aggravation of penalty, that  
18 the respondent's actions involved the taking of a great amount of  
19 money from the Frank J. Vineyards, Inc.; that respondent took  
20 advantage of a position of trust and confidence; and that  
21 respondent took advantage of an aged, seriously-ill, long-term  
22 client.

23

24 PRAYER

25 WHEREFORE, the complainant requests that a hearing be  
26 held on the matters herein alleged, and that following the  
27 hearing, a decision be issued:



- 1           1. Revoking or suspending Certified Public Accountant  
2 Number 15707 issued to respondent;  
3           2. Awarding the Board costs and attorneys' fees as  
4 provided by Business and Professions Code Section 5107; and  
5           3. Taking such other and further action as the Board  
6 deems proper.

7           Dated:

October 8, 1996.

Carol Sigmann

CAROL SIGMANN  
Executive Officer  
Board of Accountancy  
Department of Consumer Affairs  
State of California

Complainant

03541110SF96AD0979

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of the State of California  
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6 BEFORE THE BOARD OF ACCOUNTANCY

7 DEPARTMENT OF CONSUMER AFFAIRS

8 STATE OF CALIFORNIA  
9

10 In the Matter of the Accusation ) NO. AC-97-4  
11 Against: )  
12 BEAU EDWARD BURKE ) STIPULATED SETTLEMENT  
3001 Corby Avenue, Suite A ) AND DECISION OF THE BOARD  
13 Santa Rosa, CA 95407 )  
14 Certified Public Accountant )  
Certificate No. CPA 15707 )  
15 Respondent. )  
16 )

17 It is hereby stipulated by and between Beau Edward Burke,  
18 C.P.A., (hereinafter "respondent"), and his counsel, Chris  
19 Andrian, and the Board of Accountancy ("hereinafter "Board"),  
20 State of California, by and through its counsel, Deputy Attorney  
21 General Christiana Tiedemann, as follows:

22 1. That respondent has received and read the accusation  
23 presently on file and pending in case No. AC-97-4 before the  
24 Board and has filed a timely notice of defense. A copy of the  
25 accusation is attached hereto and incorporated herein as Exhibit  
26 A.  
27

2. Carol Sigman, Executive Officer of the Board, is the Complainant in the accusation which was filed and prosecuted solely in her official capacity.

3. Respondent is licensed by the Board under CPA Certificate No. 15707, which is, and has been at all times herein relevant, in full force and effect.

4. The Board acquired jurisdiction over respondent because respondent is a licensee of the Board and was served with copies of the accusation and all other documents required by Government Code section 11503 and 11505.

5. Respondent is represented by attorney Chris Andrian with whom he has discussed the provisions and effects of this stipulation. Respondent is aware of his right to a hearing on the charges contained in the accusation, of his right to confront and cross-examine witnesses, of his right to reconsideration, to appeal and to all other rights accorded to him under the California Administrative Procedure Act (Government Code section 11500 et seq.). Respondent freely and voluntarily waives these rights.

6. Respondent admits the allegations contained in paragraphs 6-8, inclusive, of the accusation and that these matters constitute cause for discipline pursuant to Business and Professions Code sections 5100(h), 5100(j) and 5100(f). This admission is made for this proceeding only and future proceedings between respondent and the Board or any governmental body responsible for licensing accountants. Respondent's admission shall not be deemed an admission in any other civil or criminal

1 action.

2 7. In order to avoid the expense and time of an  
3 administrative hearing, respondent agrees to revocation of CPA  
4 Certificate No. 15707 by the Board.

5 8. Respondent understands that in signing this stipulation  
6 rather than contesting the accusation, he is enabling the Board  
7 to issue the following order without further legal process.

8 9. Based upon the foregoing recitals, THE PARTIES STIPULATE  
9 AND AGREE THAT the Board shall, without further notice or formal  
10 proceeding, issue the following order:

11 ORDER

12 (a) Respondent agrees to the revocation of CPA  
13 Certificate No. 15707 on the effective date of this Decision,  
14 which shall not be before May 15, 1997.

15 (b) The Board waives its right under Business and  
16 Professions Code section 5107 to reimbursement of costs of  
17 prosecution and investigation for this case (Accusation No. AC-  
18 97-4) so long as respondent does not seek reissuance of his CPA  
19 certificate or issuance of a new certificate in the future. If  
20 respondent seeks reissuance of his CPA certificate or issuance of  
21 a new certificate from the Board, respondent shall reimburse the  
22 Board for all costs of prosecution and investigation of this case  
23 (Accusation No. AC-97-4) as a prerequisite to reissuance of his  
24 CPA certificate or issuance of a new certificate.

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ADOPTION

The foregoing Stipulated Settlement is adopted as the  
Decision of the Board of Accountancy of the State of California.

This Decision shall become effective on August 24, 1997.

IT IS SO ORDERED this 25 day of July, 1997.

BOARD OF ACCOUNTANCY  
STATE OF CALIFORNIA

By   
Board President